with which Mr. Parker was associated was found, after a full hearing, to be disqualified. *Religious Broadcasting Network*, 2 FCC Rcd 6561, 6566-67 (ALJ 1987), *aff'd*, 3 FCC Rcd 4085, 4090 (Rev. Bd. 1988). According to the Review Board, the applicant in question was formed by Mr. Parker, who purported to be merely a "consultant" to the applicant. And yet, the evidence conclusively demonstrated that Mr. Parker had in fact been "the true kingpin" (with Mr. Parker controlling, *inter alia*, the applicant's own checkbook, as mentioned in Footnote 10, *supra*). 3 FCC Rcd at 4090. The Board concluded that the Parker-controlled applicant was a "travesty and a hoax", a "transpicuous sham", and an "attempted fraud".

36. TIBS does not dispute the accuracy of all of the foregoing. Instead, what it claims is that Mr. Parker's fraud occurred more than 10 years ago and is, therefore, now beyond the reach of the Commission. Additionally, TIBS claims that Mr. Parker has been a principal of several applications which have been granted since the *Religious Broadcasting Network* decision, a factor which, according to TIBS, should estop the Commission from further inquiry into Mr. Parker or TIBS.

37. With respect to TIBS's asserted "statute of limitations" shield, TIBS appears to be misapprehending the Commission's policy on character qualifications. The Commission did indeed state that

> [A] ten year limitation should apply [to character inquiries into past conduct]. The "inherent inequity and practical difficulty' involved in requiring applicants to respond to allegations of greater age suggests that such a time limit be imposed.

Character Qualifications in Broadcast Licensing, 102 F.C.C.2d 1179, 1229 (1986). But the clear thrust of that limitation is to discourage the *initial* raising of allegations after the passage of 10 years -- after all, the justification offered by the Commission relates to the

evidentiary difficulties arising from responding to and resolving such allegations.

38. But the Commission's policy does not say that disqualifying conduct, already found to have been disqualifying in a timely manner on a complete record, simply vanishes every 10 years. That would be akin to declaring full amnesty for any and all misconduct ever perpetrated against the Commission. SBH is aware of no decision by the Commission even suggesting, much less overtly stating, that any such blanket absolution was ever intended.

39. And yet, that is precisely what TIBS is asserting. Note, for example, that TIBS does not claim that the decisions in *Religious Broadcasting Network* were in any way flawed. Rather, TIBS complains about the burden of having to "respond to allegations" arising from Mr. Parker's conduct relative to that case. But TIBS misses the point. Mr. Parker has ***already*** had full opportunity to respond to the allegations in that case -- that opportunity was afforded in the *Religious Broadcasting Network* case hearing and appeals.

40. While TIBS now glibly claims that, in that case, Mr. Parker "did not present his own defense", TIBS does not, and cannot, claim that Mr. Parker did not have an opportunity to present some defense or explanation of his conduct. He was, after all, a central character. [15/] He presumably was well aware of the addition and trial of the issue, as well as the ALJ's Initial Decision and the Review Board's affirmance thereof, both of which address his own personal involvement in clear and unmistakable terms. Any failure by Mr. Parker to raise any challenges which he thought he may have had -- either at the

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[15/] The issue in question was framed as follows:

> To determine whether Michael [sic] Parker is a real-party-in-interest in the San Bernardino Broadcasting Limited Partnership application . . .

hearing itself or relative to either of the two highly critical decisions -- is attributable solely to Mr. Parker.

41. In any event, the fact is that the Commission now has on its records not one, but two decisions (*i.e.*, the ALJ's and the Review Board's), both of which conclude that Mr. Parker's misconduct in the *Religious Broadcasting Network* case was disqualifying. No further inquiry need be made now -- the matter has been fully adjudicated, and the decision rendered and affirmed. Mr. Parker is not qualified to be or remain a licensee.

42. Lest there be any doubt about whether the *Religious Broadcasting Network* decisions accurately reflect Mr. Parker's character, the Commission may refer to its own decision in *Mt. Baker Broadcasting Co., Inc.*, 3 FCC Rcd 4777 (1988). That case involved a television permittee, Mt. Baker Broadcasting Co., Inc. ("MBBC"), of which Mr. Parker was an officer, director and shareholder. MBBC had filed multiple applications for extension of its construction permit and finally, in December, 1986, the Mass Media Bureau denied the final extension application. MBBC sought reconsideration, claiming that it had in fact constructed its station and was "commencing program tests with its facility" as of December 31, 1986. On the basis of these representations, the staff reinstated the permit on condition that a license application be filed within 10 days.

43. By the end of April, 1987, however, no license application had been filed, so representatives of the Commission's Field Operations Bureau inspected the station. They found that the "facilities" which had been constructed varied substantially from those which had been authorized. The staff determined that "good faith had not been shown." 3 FCC Rcd at 4777. For its part, the Commission concluded that "the facts clearly indicate an effort to deceive the Commission." 3 FCC Rcd at 4778.

44. Thus, we have yet another instance of a conclusion -- by the Commission this time -- that an applicant in which Mr. Parker was involved was guilty of fraudulent conduct before the Commission. And again, since MBBC did not (as far as SBH has been able to determine) seek reconsideration or review of that decision, it has become final, to the detriment of MBBC, Mr. Parker and TIBS.

45. But wait, says TIBS, the Commission has granted a number of applications to Mr. Parker and/or entities controlled by him (including TIBS itself) since the *Religious Broadcasting Network* and *Mt. Baker* decisions. The Commission is somehow estopped (at least according to TIBS) from now questioning Mr. Parker's character.

46. The trouble with that assertion is that it assumes that the information provided by Mr. Parker in those subsequently-granted applications was complete, candid and accurate. It was not. For example, in addressing the *Mt. Baker* decision, Mr. Parker's applications read as follows:

> Mr. Parker also was an officer, director and shareholder of Mt. Baker Broadcasting Co. Mt. Baker Broadcasting Co.'s application for extension of time of its construction permit for KORC(TV), Anacortes, Washington (File No. BMPCT-860701KP) was denied. *See Memorandum Opinion and Order*, FCC 88-234, released August 5, 1988.

See Attachments H, I, J, and K hereto. The applications in question were filed in 1990-1992. The Commission will note that the discussion of the *Mt. Baker* decision does not include any reference to "bad faith" or an "effort to deceive the Commission". [16/]

47. Similarly, with respect to the *Religious Broadcasting Network* decisions, the

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[16/] In fact, the description does not even include a citation to the FCC Record, where the opinion could be easily found. But then, in view of the tenor of the description (which makes the *Mt. Baker* decision sound like a garden-variety denial of a permit extension), it is unlikely that anyone would have been motivated to look the decision up.

applications read as follows:

> Although neither an applicant nor the holder of an interest in the applicant to the proceeding, Mr. Parker's roles as a paid independent consultant to San Bernardino Broadcasting Limited Partnership ("SBB"), an applicant for authority to construct a new commercial television station on Channel 30 in San Bernardino, California (MM Docket No. 83-911), was such that the general partner in SBB was held not to be the real-party-in-interest to that applicant and that, for purposes of the comparative analysis of SBB's integration and diversification credit, Mr. Parker was deemed such. *See Religious Broadcasting Network et. al.*, FCC 88R-38, released July 5, 1988. This proceeding was settled in 1990 and Mr. Parker did not receive an interest of any kind in the Sandino Telecasters, Inc., the applicant awarded the construction permit. *See Religious Broadcasting Network et. al.*, FCC 90R-101, released October 31, 1990.

See Attachments H, I, J and K. Again, this description fails to include any reference to "fraud", or "sham", or "hoax". It also fails to advise the Commission that the application in question was denied because the applicant was disqualified. 2 FCC Rcd at 6567, ¶60. Indeed, to the contrary, it makes an affirmative effort to suggest that the applicant was unsuccessful because of purely comparative (rather than basically disqualifying) considerations. And again, no citation to the Commission's official reporter was provided for anyone's ease of reference (although again, the pure vanilla nature of the description would not be expected to motivate anyone to look for more detail).

48. The less than candid descriptions of those two decisions do not appear to have been the result of mere inadvertence. In late 1992, TIBS filed an amendment to an application seeking to acquire an international broadcast station. That amendment read as follows:

> Two If By Sea Broadcasting Corporation has applied for authority to acquire Station KCBI from Criswell Center for Biblical Studies. As part of that application, Two If By Sea listed applications in which its officers, directors and principals had held interests and which were dismissed at the request of the applicant. *This will confirm that no character issues had been added or*

requested against those applicants when those applications were dismissed.

See Attachment L hereto (emphasis added). Again, the thrust of this amendment appears to have been to avoid inquiry into the decisions which raised serious questions about Mr. Parker's qualifications.

49. The manner in which Mr. Parker's applicants elected to "disclose", in their applications, his historical difficulties before the Commission aggravates the obvious problems with his qualifications. Those "disclosures" fall far short of the completeness and accuracy which the Commission can and should expect of its regulatees. Indeed, they seem calculated to convince the Commission that no basis exists for further inquiry into Parker's qualifications -- certainly that is precisely what TIBS's October, 1992 amendment to the Dallas short-wave application appears designed to suggest. In other words, Parker's partial, less than candid "disclosures" appear to be nothing more than further demonstration of Parker's continuing willingness to deceive the Commission.

50. Thus, we have multiple instances of misrepresentation, fraud, lack of candor or equivalent misconduct by Mr. Parker or his entities. Two of those instances have already been resolved, ***un***favorably to Mr. Parker, by the Commission. The remainder occurred significantly less than 10 years ago (in the context of the various applications quoted above, all of which were filed since 1990). Contrary to TIBS's self-serving and unwarranted claims, TIBS's application ***cannot*** be granted without detailed scrutiny into TIBS's qualifications. Indeed, in view of the fact that we already have one decision finding Mr. Parker to have engaged in disqualifying conduct and another decision finding another Parker-related entity to have sought to "deceive" the Commission, the presumption at the outset must be that TIBS is ***not*** in fact qualified to be or remain a licensee. The burden

would be on TIBS, from the outset, to establish its qualifications in view of the substantial adverse record already compiled in the Commission's records.

E. *Suggested Procedures*

51. In its Petition, TIBS repeatedly waxes eloquent on the desirability of avoiding undue delay in the resolution of this matter. On that point SBH wholeheartedly agrees. SBH suggests the following procedures which will permit prompt resolution of all pending matters.

52. The Commission can and should first address certain long-pending, fundamental matters relating to the validity of the outstanding license. In particular, the pending license renewal application can and should be dismissed because of Mr. Hoffman's failure to tender a timely hearing fee in July, 1991. SBH brought this to the Commission's attention in a Petition to Dismiss the renewal application filed in August, 1991. While the Office of Managing Director denied that petition in April, 1993, SBH filed an Application for Review of that decision in May, 1993. That Application for Review is still pending. As set forth therein, no valid basis existed (or currently exists) for accepting Mr. Hoffman's late-filed hearing fee. Disposition of SBH's Application for Review, and consequent dismissal of the pending renewal application, can be accomplished without a hearing.

53. Next, the Commission can and should address the "bare license" question. That question has been pending before the Commission for at least four years already. All parties, including Mr. Hoffman, have had ample opportunity to set forth their positions to the Commission. As the Commission's January 30, 1997 Letter correctly indicates, though, "none of the parties to the [assignment] application have refuted the allegation that *the assignor* held nothing more than a bare license at the time it filed the instant assignment

application in 1993." That being the case, the assignment application and the renewal application may properly be dismissed. Again, no hearing would be necessary to achieve that result.

54. Next, the Commission can and should address the question of Astroline's misrepresentations. Obviously, if Astroline initially acquired its license through fraud on the Commission and the Courts, denial of Astroline's license renewal is appropriate. While resolution of allegations of misrepresentation would normally require a hearing, that is not the case in the unusual circumstances presented here. A hearing is required only when there is a substantial and material question of fact present; here, there is no such question.

55. It is conceded by Astroline's current representative, Mr. Hoffman, that Astroline did not meet the minimum requirements for qualification under the Commission's minority distress sale policy. *See* Attachment B. We also have the various documents which SBH has submitted in demonstration of the assertion that Astroline was not a "limited partnership" within the meaning of the Commission's policies. [17/] Thus, the Commission has before it the representations which Astroline made to the Commission and the Courts, and the Commission has before it the documents demonstrating that those representations were false. Since intent can generally be inferred from evaluation of all the facts and circumstances, and since the record of those facts and circumstances is well-established and essentially uncontested, no hearing is necessary to conclude that Astroline engaged in disqualifying misrepresentation.

56. It is clear that, once the steps outlined above have been accomplished, the

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[17/] While Mr. Hoffman has not specifically addressed this point, it is clear from his presentation to the Second Circuit that he is in essential agreement on the underlying facts.

Astroline renewal application can and should be dismissed or denied without hearing. Once that occurs, the Astroline/TIBS assignment application can also be summarily dismissed, as there will remain nothing to be assigned. [18/] In that way, the Commission could resolve this long-pending proceeding with a minimum of delay and no need for a hearing. SBH urges the Commission to take such an approach at the earliest possible time.

Respectfully submitted,

/s/ Harry F. Cole
Harry F. Cole

Bechtel & Cole, Chartered
1901 L Street, N.W.
Suite 250
Washington, D.C. 20036
(202) 833-4190

Counsel for Alan Shurberg d/b/a
Shurberg Broadcasting of Hartford

March 21, 1997

[18/] Of course, any such dismissal would not require resolution of the basic character qualifications questions relating to TIBS. Those questions would remain, however, and would have to addressed before TIBS is granted any further authorizations or renewals thereof -- but that is not a matter which would have to be addressed in the context of this proceeding.

ATTACHMENT A

"Response to Motion for Leave to File
Further Informational Statement",
filed by Astroline Communications Company Limited Partnership
in Shurberg Broadcasting of Hartford v. FCC,
No. 84-1600 (D.C. Cir., filed November 17, 1988)

ORAL ARGUMENT WAS HELD IN THIS CASE ON JANUARY 8, 1986

BEFORE THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

SHURBERG BROADCASTING OF HARTFORD, INC., Appellant, v. FEDERAL COMMUNICATIONS COMMISSION, Appellee, ASTROLINE COMMUNICATIONS COMPANY LIMITED PARTNERSHIP, Intervenor.	Case No. 84-1600

RESPONSE TO MOTION FOR LEAVE
TO FILE FURTHER INFORMATIONAL STATEMENT

Astroline Communications Company Limited Partnership ("Astroline"), intervenor, hereby submits this memorandum in response to the "Motion For Leave To File Further Informational Statement" ("Motion") filed by Shurberg Broadcasting of Hartford, Inc. ("Shurberg"), appellant, on November 10, 1988.

In its Motion, Shurberg seeks leave to inform the Court that an involuntary bankruptcy petition has been filed against Astroline. Shurberg seeks leave to bring this matter to the attention of the Court ostensibly because the filing of the involuntary petition against Astroline may have an impact on the "disposition of the instant appeal," Motion at 2, even though Shurberg confesses that it "is not now prepared to argue what

effect, if any, that proceeding should have on the instant appeal." Id. at 3.

Astroline has no objection to the filing of a copy of the involuntary petition with the Court, but it does not believe, despite the contrary suggestion of Shurberg, that this development is relevant to this appeal. Shurberg speculates that Astroline's license to operate Station WHCT-TV may be transferred to a trustee or other third-party "in the near future." Id. at 2. This will not occur. Astroline intends to exercise its right to convert the Chapter 7 bankruptcy proceeding to a reorganization under Chapter 11, pursuant to 11 U.S.C. § 706(a). Following this conversion, Astroline will continue to operate WHCT-TV as a debtor-in-possession. Moreover, Astroline intends to continue to operate WHCT-TV following the completion of a successful reorganization. Shurberg's suggestion that a trustee might be appointed "in the very near future," id., or at any other time, is thus nothing more than unfounded conjecture.

Respectfully submitted,

Lee H. Simowitz

Lee H. Simowitz
David L. Dudley
BAKER & HOSTETLER
1050 Connecticut Avenue, N.W.
Suite 1100
Washington, D.C. 20036
(202) 861-1500

Counsel for Astroline Communications
Company Limited Partnership

ATTACHMENT B

Excerpt of brief filed on behalf of
Martin W. Hoffman, Trustee,
in Hoffman v. WHCT Management, Inc. et al.,
No. 96-5112 (2d Cir., filed November 8, 1996)

TV

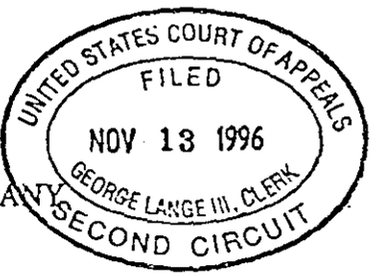
96-5118 XAP

96-5112

UNITED STATES COURT OF APPEALS

FOR THE

SECOND CIRCUIT



IN RE:
ASTROLINE COMMUNICATIONS COMPANY LIMITED PARTNERSHIP,
Debtor.

MARTIN W. HOFFMAN, Chapter 7 Trustee of the Bankruptcy Estate of ASTROLINE COMMUNICATIONS COMPANY LIMITED PARTNERSHIP,
Plaintiff-Appellant-Cross-Appellee,

vs.

WHCT MANAGEMENT, INC.; THOMAS A. HART, JR.; ASTROLINE COMPANY; ASTROLINE COMPANY, INC.; HERBERT A. SOSTEK; FRED J. BOLING, JR.; RICHARD H. GIBBS; CAROLYN H. GIBBS, Co-Exec. of Estate of Joel A. Gibbs; RICHARD GOLDSTEIN, Co-Exec. of Estate of Joel A. Gibbs; EDWARD A. SAXE, Co-Exec. of Estate of Joel Gibbs; ALAN TOBIN, Co-Exec. of Estate of Joel A. Gibbs; ROBERT ROSE; MARTHA GIBBS ROSE,
Defendants-Appellees,

RANDALL L. GIBBS,
Defendant-Appellee-Cross-Appellant,

U.S. TRUSTEE, OFFICE OF,
U.S. Trustee.

ON APPEAL FROM THE UNITED STATES BANKRUPTCY COURT AND THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT

BRIEF OF THE APPELLANT,
MARTIN W. HOFFMAN, TRUSTEE

To Be Argued By:
John B. Nolan

November 8, 1996

John B. Nolan
Steven M. Greenspan
Kent I. Scott-Smith
Day, Berry & Howard
CityPlace I
Hartford, CT 06103-3499
(860) 275-0100
His Attorneys

C. Astroline Company's Growing Investment in the Debtor

Ultimately, Astroline Company's efforts to obtain additional equity or debt capital for ACCLP were unsuccessful, In re Astroline, 188 B.R. at 101 (App. at 10)(T. Vol. 3 at 78-79), and the Astroline Company partners considered abandoning the venture. Instead, Astroline Company chose to continue to fund ACCLP's operations and capital needs itself, as it had done since ACCLP's inception. In re Astroline, 188 B.R. at 101 (App. at 10)(T. Vol. 1 at 134-37; T. Vol. 3 at 81).

Consistent with its decision to fund all of ACCLP's capital requirements itself, Astroline Company caused the terms of the ACCLP partnership agreement to be modified such that Astroline Company significantly increased its share of the equity in the Debtor and secured more of the valuable tax benefits for its partners. Notwithstanding the FCC minority preference guidelines, the amendment resulted in Ramirez no longer owning 21% of the equity in ACCLP. (T. Vol. 1 at 138-63; Exs. 9, 54). Rather than retaining 21% of the equity, as specified in the original partnership agreement, Ramirez was given the right only to receive 21% of all partnership distributions after Astroline Company had been repaid its equity contributions in full, with a return. (T. Vol. 1 at 162, Ex. 9). Ramirez's interest, which had been reflected as 21% on the 1984 ACCLP tax return, was shown to have been reduced to less than 1% on the 1985, 1986 and 1987 tax returns. (Exs. 10-13). Astroline Company's interest was correspondingly increased from 70% to 82% in 1987. (Ex. 13). This increased interest reflected Astroline Company's equity investment of $22 million. In re Astroline, 188 B.R. at 101 (App. at 10).

D. Cash Control System

Boling admitted at trial that Astroline Company created and administered a comprehensive "cash control system" over the Debtor's funds. (T. Vol. 5 at 8-9, 18-19, 104-05). Sullivan was responsible for managing ACCLP's cash. (T. Vol. 5 at 14-15, 18-19). The cash control system covered all receipts and disbursements of the Debtor from its inception until August 31, 1988, when Astroline Company ceased investing in the Debtor. In re Astroline, 188 B.R. at 101 (App. at 10)(T. Vol. 1 at 175-77, 188; T. Vol. 5 at 16, 18-19). One of Sullivan's principal responsibilities was to reduce interest expense to the Astroline Company partners, who personally were borrowing the money they invested in the Debtor through Astroline Company. (T. Vol 4 at 65; T. Vol. 5 at 20). Boling admitted that this particular feature of the cash control system was established for the personal benefit of the Astroline Company partners. (T. Vol. 5 at 20, 105). There was no evidence at trial that the cash control system conferred any benefit on the Debtor. (T. Vol. 5 at 8-20; 103-05).

Until just prior to the bankruptcy filing on October 31, 1988, there was never a checkbook in the Debtor's Hartford office for the Debtor's only checking account, which was maintained at State Street Bank in Boston. In re Astroline, 188 B.R. at 102 (App. at 11)(T. Vol. 1 at 193-95; T. 4/21/95 at 141, 166, 185). All ACCLP bank statements were sent to and reconciled by Astroline Company staff in Massachusetts. In re Astroline, 188 B.R. at 102 (App. at 11)(T. Vol. 7 at 54-55). Significantly (and remarkably), Boling rejected Ramirez's repeated

requests that the Debtor be allowed to maintain its checkbook in its own office in Hartford. (T. Vol. 1 at 203, 236-37).

To control ACCLP's cash, Astroline Company imposed an intricate payables system on the Debtor. (T. Vol. 1 at 172-173; Exs. 87, 152). By denying the Debtor possession of its checkbooks, Astroline Company was able to maintain complete control over ACCLP's cash. In order for ACCLP to get a check from Astroline Company to pay any bill (even for petty cash or paper clips), it had to obtain the appropriation authorization of an Astroline Company partner or employee. Only upon such approval and authorization could a check be drawn and sent from the Astroline Company office in Massachusetts to ACCLP in Hartford. In re Astroline, 188 B.R. at 102 (App. at 11)(T. Vol. 1 at 176, 195, 240; T. Vol. 3 at 106, 145; Exs. 136, 137). As described at trial by Alfred Rozanski, ACCLP's business manager, every invoice received by ACCLP in Hartford was sent to Astroline Company's office along with a transmittal memorandum, backup documentation and, in most circumstances, a check request. (T. Vol 7 at 42-44, 61; Exs. 39, 210). Ramirez testified that ACCLP could not obtain a check from Astroline Company's office in Massachusetts without submitting the proper documentation; as Ramirez put it, ACCLP "had to dot all the I's and cross the T's" in order to get a check. (T. Vol. 1 at 240). Astroline Company demanded that this procedure be followed, notwithstanding the fact that ACCLP had a fully functional office in Hartford, at least from the beginning of 1985, and, thereafter, had a sophisticated computer system specifically designed to accomplish automatically the functions performed by Astroline Company. (T. Vol. 1 at 181-84, 198-99; T. Vol. 3 at 142; T. Vol. 7 at 61-62).

The Bankruptcy Court expressly found after trial that "[p]rior to August 31, 1988, Astroline Company processed all of the Debtor's checks, which numbered in the thousands...." In re Astroline, 188 B.R. at 102 (emphasis added)(App. at 11). Every one of the thousands of checks was prepared in the Astroline Company office in Massachusetts by its employees. (T. Vol. 7 at 15, 43; T. 4/15/95 at 140; Ex. 212). This was a cumbersome and expensive process that even ACCLP's auditors, Arthur Andersen, had formally recommended be changed. (T. Vol. 1 at 199, 233-37; Ex. 55 at 10). As stated in an Arthur Andersen memorandum dated May 30, 1986, "accounts payable are being paid through a related party [identified as Astroline Company by Ramirez (T. Vol 1 at 234-35)] ... consideration should be given to moving the accounts payable function to Hartford." (Ex. 55 at 10). In fact, Ramirez admitted that by the beginning of 1986, ACCLP had sufficient staff and capability through its sophisticated computer accounting system to handle the payable and check-writing functions. (T. Vol. 1 at 183). The fact that these functions continued to be performed by Astroline Company in Massachusetts demonstrates Astroline Company's control over the Debtor.

Boling admitted at trial that he wrote "O.K." or "O.K. per FJB" on hundreds of check requests, transmittal forms and invoices; In re Astroline, 188 B.R. at 102 (App. at 11)(T. Vol. 3 at 110-139; Exs. 39, 39 A-H, 216); and Ramirez acknowledged that if Boling did not approve the payment of an invoice, the Astroline Company personnel that worked in Astroline Company's office in Massachusetts would not have drawn the check. (T. Vol. 1 at 202, Exs. 35, 39). As Ramirez explained at trial:

Q. And if [Boling] didn't say okay, they wouldn't have drawn the check, would they?

A. In all likelihood, they would not have.

Q. And if they didn't draw the check, you couldn't pay the bill?

A. In all likelihood, I couldn't.

(T. Vol. 1 at 202).

Boling also admitted that it was the practice, at least in 1984 and 1985, that he or Sostek "initial" all invoices of ACCLP before they were paid. (T. Vol. 3 at 158). He also acknowledged that there were instances where, rather than writing "O.K." on an invoice, they wrote "No" or "Hold" or some other order "by" or "per" their direction. (T. Vol. 3 at 117-127, 129, 133-36, Ex. 130). Moreover, the evidence also established that Sostek approved the payment of invoices. (T. Vol. 3 at 133, Exs. 39I, 141-148). It is clear that no check to pay any ACCLP obligation would (or could) have been written if Astroline Company did not consent. (T. Vol. 1 at 202, T. Vol. 3 at 121-123). Indeed, Astroline Company would not transfer funds into the ACCLP account until Boling or Sostek approved a check for payment. (T. Vol. 3 at 110-11).

In addition to its total control of the expense side of ACCLP's business, Astroline Company also completely controlled the Debtor's income and cash. At Astroline Company's insistence, all operating revenues received by ACCLP were deposited in a lock box account at Bank of Boston Connecticut, which had a twice-weekly sweep feature that automatically transferred all funds to a bank account at State Street Bank in Massachusetts. In re Astroline, 188 B.R. at 101 (App. at 10) (T. Vol. 1 at 185-189; T. Vol. 7 at 36, 56-58; Exs. 22, 55, 129, 47, 48). Although the defendants claimed at trial that Ramirez had "access" to

the Debtor's funds because he had authority to sign checks, it was undisputed that, prior to August 31, 1988, Ramirez never had a checkbook (or a check) in Hartford and could not draw on that account unless someone in the Astroline Company office in Massachusetts chose to give him a check to sign. In re Astroline, 188 B.R. at 102 (App. at 11) (T. Vol. 1 at 202). Further, Ramirez had no access to the Debtor's revenues, all of which were deposited in the lock box account from which they were swept to Boston. In re Astroline, 188 B.R. at 101 (App. at 10) (T. Vol. 7 at 56-60).

Significantly, it is undisputed that, even if Ramirez had "access" to the Debtor's funds, certain general partners of Astroline Company (Sostek, Boling, Richard Gibbs and Joel Gibbs) each had individual signature authority on the ACCLP bank accounts at State Street Bank and Security National Bank in Massachusetts, always having unchecked authority "to empty the Debtor's bank account at any time without Ramirez's knowledge, consent or participation...." In re Astroline, 188 B.R. at 104, 106 (App. at 13, 15) (T. Vol. 1 at 220-21, 225-26; T. Vol. 3 at 90, 93, 98-101; T. 4/21/95 at 185; Exs. 20, 21, 212, 215, 216). As Ramirez admitted with respect to the Debtor's State Street Bank account:

> Q. Okay. But four other people had control of the account?
>
> A. That's true.
>
> Q. Okay. And they could have taken the money out any time they wanted?
>
> A. They never did, but they could have.

(T. Vol. 1 at 238).

Contrary to Ramirez's belief, however, the partners of Astroline Company did sign at least two checks on the Debtor's account, each payable to Astroline Company for "interest," without the knowledge or

consent of Ramirez. In re Astroline, 188 B.R. at 102, 106 (App. at 11, 15) (T. 4/21/95 at 179-180; Exs. 216A, 216B). Ramirez testified about those checks as follows:

> Q. Okay. So you don't know why Joel Gibbs wrote a check to the Astroline Company on April 10th, 1985 for $20,071, do you?
>
> A. No.
>
> Q. And you don't know why Mr. Boling wrote a check to the Astroline Company for interest on February 6th, 1985 in the amount of $5,352, do you?
>
> A. No, I do not.

(T. 4/21/95 at 179-80). As the Bankruptcy Court concluded, "[t]he two checks ... defy an explanation." In re Astroline, 188 B.R. at 106 (App. at 15). The defendants offered no evidence at trial to explain why Boling and Gibbs wrote checks for "interest" to Astroline Company without Ramirez's knowledge. There was no evidence offered at trial of any debt owed by the Debtor to Astroline Company in 1985.

The evidence also demonstrated numerous instances in which ACCLP checks were signed by the partners of Astroline Company. (Exs. 212, 215, 216). Although the testimony was that many of these checks had been requested by personnel in ACCLP's Hartford office and approved by Ramirez (and prepared by Astroline Company personnel in Massachusetts), certain checks, in addition to those payable to Astroline Company, were prepared by Astroline Company with no involvement by Ramirez or any ACCLP employees. One example was a check payable to Rev. Gene Scott of FCI for $100,000 that even Boling (who signed the check) could not explain at trial. (T. Vol. 3 at 147-48; Ex. 212).

In addition to control of the revenue and expenses of ACCLP, Astroline Company also was substantially involved in other aspects of the Debtor's financial reporting and planning. Financial projections for the business were prepared by ACCLP's accountants for review by Boling and Sostek. (Exs. 61, 63). Drafts of annual financial statements and tax returns were prepared by ACCLP's accountants and submitted to Boling for his review and input. (Exs. 68, 84, 118). Ramirez and Rozanski regularly submitted revenue and expense projections for ACCLP to Sostek and Boling for their review and approval. (T. Vol. 7 at 63-68; Exs. 69, 70, 112, 113, 116, 117, 120, 121). The financial reporting requirements imposed by Astroline Company on ACCLP were so rigorous that, at one point, Ramirez apologized to Sostek and Boling for the poor quality and frequency of ACCLP's financial reporting. (T. Vol. 2 at 29-33; Ex. 78).

Astroline Company also manipulated ACCLP's financial reporting and tax treatment of certain transactions for the personal benefit of its partners which further evidenced the substantial degree of control imposed by the putative limited partner over the business of the Debtor. (T. Vol. 6 at 94). It was established at trial that equity contributions of $4 million made by Astroline Company in 1987 were "reclassified" as debt in January, 1988. (T. Vol. 2 at 62-66; T. Vol. 7 at 75-79; Ex. 24). Boling testified that he prepared a Promissory Note, drove to Hartford and demanded that Ramirez sign the note in favor of Astroline Company. (T. Vol. 5 at 55-56; Exs. 23, 144). Although the "reclassification" was shown on the 1987 audited statements of ACCLP, the 1987 monthly internal statements never showed the $4 million debt. (Exs. 15, 205).

Six months later, in May, 1988, the Promissory Note was secured by a mortgage on real property owned by ACCLP, again at Boling's direction and insistence. (T. Vol. 2 at 82-85; Ex. 154). Significantly, ACCLP sought unsuccessfully to obtain a secured loan of $5.5 million in November, 1987, presumably to pay the Astroline Company "loan" that, incidentally, was still classified as equity on the October, 1987 financial statement. (T. Vol. 3 at 82-86, Exs. 153, 205). Again in September, 1988, just two months before the bankruptcy filing, Astroline Company required that ACCLP sign a Revolving Loan Agreement, this time purporting to evidence a $2,930,000 loan, all of which had been advanced to ACCLP prior to the date the loan agreement was signed. (T. Vol. 5 at 78-83; Exs. 31, 155).

In addition to maintenance of complete dominion and control over the cash and finances of ACCLP, Astroline Company exerted control over other aspects of ACCLP's business. Numerous correspondence from the Debtor's professional firms were addressed exclusively or copied to Boling and/or Sostek. (Exs. 60, 62, 65, 90, 93, 94). Ramirez sought Boling's and Sostek's approval for certain construction modifications at ACCLP's Garden Street facility and made recommendations to Boling. (T. Vol. 2 at 40-47; T. 4/21/95 at 180-81; Exs. 82, 83). Ramirez also sought direction from Boling and Sostek regarding advertising, marketing and programming issues. (Exs. 71, 72, 73, 76, 86, 87, 91, 92, 111, 123, 133).

Significantly, in two documents submitted to third parties, Astroline Company or its general partners were actually identified as "general partners" of ACCLP. First, in an Authority for Deposit and Borrowing, submitted to State Street Bank in Boston, Massachusetts,

Boling signed the document stating that he, Sostek, Joel Gibbs and Richard Gibbs were the general partners of ACCLP. (Ex. 217). Second, in a document submitted to the FCC on May 29, 1985, Ramirez certified that Astroline Company was a general partner, owning 70% of the equity of the partnership. (Ex. 221).

E. The Debtor's Bankruptcy Proceedings and the Formation of Astroline Company, Inc.

On October 31, 1988, an involuntary petition under Chapter 7 of the Bankruptcy Code was filed by certain creditors of ACCLP. The Debtor consented to an order for relief and, at the Debtor's request, the Bankruptcy Court converted the case to one under Chapter 11. Upon motion by the Official Committee of Unsecured Creditors, the Debtor's case was reconverted to a case under Chapter 7 on April 9, 1991. Also on that date, the plaintiff was appointed Interim Trustee of the Debtor's bankruptcy estate. On June 13, 1991, the plaintiff was appointed Permanent Trustee.

On November 2, 1988, two days after the involuntary petition was filed, Astroline Company was purportedly dissolved and all of its assets transferred to Astroline Company, Inc., a Massachusetts corporation of which Sostek, Boling, Richard Gibbs and Randall Gibbs are the sole officers, directors and shareholders. (T. Vol. 3 at 5, 7-9; Ex. 18). Although Astroline Company was "reconstituted" as Astroline Company, Inc., its business remained precisely the same. The defendants admitted at trial that the transfer to corporate form was an effort to limit the liabilities of the Astroline Company partners. (T. Vol. 3 at 7-8; T. Vol. 5 at 137-138). At the same time, the Astroline Company partners transferred their shares in WHCT Management to Ramirez for no consideration. (Ex. 19).

ATTACHMENT C

Order, filed June 25, 1987,
in Shurberg Broadcasting of Hartford v. FCC,
No. 84-1600 (D.C. Cir.)